STATE OF MICHIGAN

IN THE

SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS
Hon. Helene N. White, Presiding Judge

PHYLLIS L. GRIFFITH, Legal Guardian for DOUGLAS W. GRIFFITH, a Legally Incapacitated Adult,

Plaintiff-Appellee,

v. Supreme Court No. 12286

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

Court of Appeals No. 232517
Ingham County Circuit Court No. 97-087437-NF

AMICUS CURIAE BRIEF OF THE COALITION PROTECTING AUTO NO FAULT

PROOF OF SERVICE

*** ORAL ARGUMENT REQUESTED ***

COCHRAN, FOLEY & ASSOCIATES, P.C.
Attorneys for the Coalition Protecting Auto No Fault
Terry L. Cochran (P35980)
Mary K. Freedman (P47047)
15510 Farmington Road
Livonia, MI 48154
(734) 425-2400

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COUNTER-STATEMENT OF JURISDICTION

The Coalition Protecting No Fault does not contest this Court's jurisdiction.

COUNTER-STATEMENT OF QUESTIONS PROVIDED

WHETHER INJURED INSUREDS BEING CARED FOR AT HOME, WHO WOULD BE INSTITUTIONALLIZED IF A FAMILY MEMBER WERE UNWILLING TO CARE FOR THEM AT HOME, ARE ENTITLED TO REIMBURSEMENT FOR ACCOMMODATIONS INCLUDING EXPENSES FOR FOOD, PURSUANT TO MCLA 500.3107(1)(a)?

Plaintiff-Appellee Answers:	Yes.
Defendant-Appellant Answers	No.
Trial Court Answered:	Yes.
Court of Appeals Answered:	Yes.
CPAN Answers:	Yes.

I. INTRODUCTION

The Coalition Protecting Auto No Fault ("CPAN") is a broad-based group formed to preserve the integrity of Michigan's model no-fault automobile insurance system. CPAN's member organizations and associations range from major medical organizations and patient advocacy groups directly involved in first-party no-fault issues, to consumer groups that have members concerned with third-party claims. CPAN's membership is comprised of thirteen medical provider groups and twelve consumer organizations:

CPAN: Coalition Protecting Auto No Fault

Medical Provider Groups	Consumer Organizations
Michigan Academy of Physicians Assistants	Brain Injury Association of Michigan
Michigan Assisted Living Association	Disability Advocates of Kent County
Michigan Association of Centers for Independent Living	Michigan Paralyzed Veterans of America
Michigan Brain Injury Providers Council	Michigan Partners for Patient Advocacy
Michigan Chiropractic Society	Michigan Protection and Advocacy Services
Michigan College of Emergency Physicians	Michigan Rehabilitation Association
Michigan Dental Association	Michigan Citizens Action
Michigan Health & Hospital Association	Michigan Consumer Federation
Michigan Home Health Care Association	Michigan State AFL-CIO
Michigan Orthopedic Society	Michigan Trial Lawyers Association
Michigan Osteopathic Association	Michigan Tribal Advocates
Michigan Orthotics and Prosthetics Association	Michigan UAW
Michigan State Medical Society	

CPAN and its members are concerned about the effect of altering the law as it currently exists, allowing room and board as an "allowable expense" under MCL 500.3107(1)(a) for those individuals who, but for the generosity and commitment of their families, would be institutionalized. CPAN believes Michigan has a superior no-fault system that was formed for the very purpose of preserving quality health care and victim's rights, which are so vital to its proper functioning. Open access to health care providers, prompt and adequate medical care, reasonable choice of service, and fair and just treatment of accident victims are all part of CPAN's mission.

In particular, CPAN's members are concerned that denying benefits for room and board to catastrophically injured insureds being cared for by their family members in their homes will complicate medical care decisions, compel medical providers to assess family resources, make it harder for families to care for their catastrophically injured loved ones. That decreasing benefits included as "allowable expenses" will force family members to leave their families in institutional settings, often resulting in inadequate care for their loved ones.

Furthermore, that if this Court were to accept Defendant-Appellant's proposed rule and disallow payment for any expense under the no-fault law "if the item is as necessary to uninjured persons as to the claimant," it would open the door to insurance companies refusing to pay for portions of a hospital bill or residential facility that represents a non-medical diet, linens, bed clothing, toiletries and the like. Moreover, such a principle would have serious implications for other kinds of services rendered to catastrophically injured victims such as motor vehicular transportation and accommodations. Quite simply, such a ruling could have devastating implications for the citizens of the State of Michigan and could in fact erode the entire no-fault act. Thus, CPAN urges this Court to follow *Reed v. Citizens*

Ins. Co., 198 Mich App 443; 499 NW2d 22(1993), lv den 444 Mich 964 (1994) and affirm the Court of Appeals ruling in this matter.

II. MATERIAL FACTS AND PROCEDURE

Plaintiff Douglas Griffith sustained catastrophic injuries in a motor vehicle accident which left him totally disabled. As a result of those injuries, he requires "constant monitoring, care and assistance with every aspect of life." *Griffith v. State Farm Mutual Automobile Insurance Company*, unpublished per curiam of the Court of Appeals, decided August 16, 2002 (Docket No. 232517). He requires 24 hour per day care for his daily needs and is confined to a wheelchair for purposes of mobility. The severity of Mr. Griffith's injuries required him to be hospitalized for several months prior to being institutionalized at Runnaway Bay Apartments for two years. While institutionalized at Runnaway Bay Apartments, Mrs. Griffith also attended to his care and provided meals for Mr. Griffith.

After two years of being institutionalized, it was determined that Mr. Griffith would benefit both medically and rehabilitatively from being cared for at home, the belief being that the familiar surroundings and environment would provide stimulation to Mr. Griffith and aid in his rehabilitation. Mr. Griffith could only return home, however, if Mrs. Griffith was willing and able to endure the sacrifice required in providing her husband with the extensive 24-hour care he requires. Without that sacrifice and commitment, Mr. Griffith would require **indefinite institutionalization**. Mrs. Griffith willingly made that sacrifice and commitment and, with the aid of in-home nursing support, Mr. Griffith was allowed to return to his home.

During the two years in which Mr. Griffith was institutionalized, Defendant-Appellant paid no-fault benefits for Mr. Griffith's accommodations (room and board) and reimbursed Mrs. Griffith for meals she provided to her husband pursuant to the "allowable

expenses" provision of section 3107(1)(a) of the No-Fault Act. It was only after Mr. Griffith's return home that Defendant-Appellant began denying payments for Mr. Griffith's food expenses which they had previously been paying. Plaintiff-Appellee filed a lawsuit to compel payment of no-fault personal protection insurance benefits due and owing. Defendant-Appellant appealed the Trial Court's ruling that Mr. Griffith's food expenses, although incurred while residing in his own home, constitute an "allowable expense' under section 3107(1)(a), and pursuant to *Reed,* supra.

Defendant-Appellant appealed to the Court of Appeals arguing that the trial court erred by holding that the cost of Mr. Griffith's food was an allowable expense under section 3107(1)(a) and asserting that a causal link must exist between the injuries sustained in a motor vehicle accident and an incurred expense. Defendant-Appellant further argued that a person must consume food regardless of whether he is disabled and regardless of where he resides therefore, once Mr. Griffith returned home, food expenses were no longer incurred as a result of his injuries. (*Griffith* p. 1-2) Affirming the trial court's ruling, the Court of Appeals cited *Reed*, supra stating that "if an injured insured would otherwise require institutionalized care were a family member not willing to provide home care, room and board in the home constitutes an allowable expense under MCL 500.3107(1)(a)."

Defendant-Appellant filed an application for leave to appeal to the Michigan Supreme Court which was initially denied. However, upon receipt of Defendant-Appellant's Motion for Reconsideration of the leave denial, the Michigan Supreme Court reversed itself and granted Defendant-Appellant's application for leave to appeal.

Now, the Supreme Court is presented with the opportunity to determine whether room and board constitutes an "allowable expense" under section 3107(1)(a) for a catastrophically injured person who would otherwise require institutionalized care were a

family member not willing to provide care within the home. As CPAN explains below, under these narrowly construed circumstances, there is no basis to draw a distinction for room and board accommodations provided to a catastrophically injured insured receiving care at home or in an institution. This is the only interpretation of the statute that can be viewed as effectuating the Legislature's intent to strike a balance between the efficiencies and savings of a no-fault system and the need to compensate accident victims. To adopt State Farm's interpretation of the statute would directly thwart this legislative intent. Therefore, as the Court of Appeals indicated in *Griffith* supra, "if an injured insured would otherwise require institutionalized care were a family member not willing to provide home care, room and board in the home constitutes an allowable expense under MCL 500.3107(1)(a)."

III. STANDARD OF REVIEW

This case involves a question of statutory interpretation, which requires review de novo. See *McCauley v General Motors Corporation*, 457 Mich 513, 518; 578 NW2d 282 (1998).

IV. STATUTORY CONSTRUCTION

This Court has emphasized time and time again that "[t]he fundamental rule of statutory construction is to give effect to the Legislature's intent. That intent is clear if the statutory language is unambiguous, and the statute must then be enforced as written. *Weakland v Toledo Engineering Co., Inc.* 467 Mich 344, 347; 656 NW2d 175 (2003) (citation omitted). The words in a statute must be given their plain or commonly-understood meaning, but any definition the Legislature supplies in a statute controls their meaning. See *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159-160; 645 NW2d 643 (2002); *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999). The structure, subject, and context of the statute ordinarily provide information regarding this meaning. See *Id.*; see also *People v Vasquez*, 465 Mich 83, 89; 631 NW2d 711 (2001) (Markman, J.). Not surprisingly, then,

courts are bound to give effect to all the words in a statute, and if possible, harmonize any conflicts that exist. See *Nowell v Titan Ins. Co.*, 466 Mich 478, 482; 648 NW2d 157 (2002); *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002).

V. INJURED INSUREDS BEING CARED FOR AT HOME, WHO WOULD BE INSTITUTIONALIZED IF A FAMILY MEMBER WERE UNWILLING TO CARE FOR THEM AT HOME, ARE ENTITLED TO REIMBURSEMENT FOR ACCOMMODATIONS INCLUDING EXPENSES FOR FOOD, PURSUANT TO MCLA 500.3107(1)(a).

CPAN has two paramount concerns in this matter. The first concern is the impact overruling *Reed* would have upon both the catastrophically injured insureds currently receiving reimbursement of food expense as well as those incurring such expenses in the future. The second concern is the slippery slope that will be created if this Court adopts the Defendant-Appellant's proposed test to determine whether an expense is an "allowable expense" which would disallow payment for any expense under the no-fault law "if the item is as necessary to uninjured persons as to the claimant."

A. The Impact of Overruling *Reed*, supra

1. The Current Test as Set Forth in *Reed* Provides a Narrowly Construed and Workable Test

The Michigan no-fault system was enacted to correct deficiencies, such as inadequate compensation and delays in recovery of benefits, which resulted from the fault system previously in place. *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978), aff'd 412 Mich 1105 (1982)." In exchange for traditional tort remedies, the no-fault statutory scheme provides for liberal "allowable expenses" stating:

> "Sec. 3107. (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:

> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."
>
> MCLA 500.3107(a)

In defining "allowable expenses," Michigan court have approved attendant care provided by family members, *Booth v Auto Owners Ins. Co.*, 224 Mich App 724, 569 NW2d 903 (1997), room and board and maintenance cost provided to injured persons in need of care who would otherwise be institutionalized, *Reed* supra, costs of acquiring a modified van for a paraplegic, *Sharp v Preferred Risk Mutual Ins. Co.,* 142 Mich App 499, 370 NW2d 619 (1985), rental expenses for a larger and better equipped apartment, *Williams v AAA of Michigan*, 250 Mich App 249, 646 NW2d 476 (2000), and modifications to an existing home, *Proudfoot v State Farm Mutual Ins. Co.*, 469 Mich 476, 673 NW2d 739 (2003).

Although "allowable expenses" has been liberally interpreted, the Michigan Court of Appeals refused to extend no-fault benefits to include television and telephone services. *Hamilton v AAA of Michigan*, 248 Mich App 535, 639 NW2d 837 (2002). In *Hamilton*, the Court of Appeals defined the word "care" to mean "serious attention' or "protection" reasoning:

> In this regard, we note that "reasonable" is defined as "agreeable to or ... logical" and that "necessary" means "essential, indispensable, or requisite." Random House Webster's College Dictionary (1997). In addition, we note that "care" entails "serious attention" or "protection" and that "recovery" refers to "restoration or return to any former or better condition, esp[ecially] to health from sickness, injury, addiction, etc." Id. Further, we note that "rehabilitate" is defined as "to restore or bring to a condition of good health, ability to work, or productive activity."
>
> *Id.* at 843.

Furthermore, the Hamilton court expressly noted that "room and board" had been determined to be a reasonably necessary expense causally related to the injuries arising out of the automobile accident pursuant to 3107(1)(a) reasoning:

> "While 'the **no-fault** act is not limited strictly to the payment of medical **expenses**,' *Heinz v Auto Club Ins. Ass'n*, 214 Mich App 195, 197, 543 NW2d 4 (1995), it has never been found to require payment for **expenses** not **causally connected to** an **injured** person's **care, recovery, or rehabilitation**. *Id.* To this end, costs resulting from the appointment of guardians or conservators to perform services for seriously **injured** persons, and room and board, attendant care, modifying vehicles for paralyzed individuals, rental **expenses**, and similar costs have been found by this Court to be reasonably necessary expenses under subsection 3107(1)(a)."
>
> *Id.* at 546 (Emphasis Added)

Over the years, the courts have examined the legislative purpose behind the no-fault law and have determined four (4) essential purposes. First, the no-fault act was designed to "afford prompt and adequate reparation for economic losses such as medical expenses incurred by individuals injured in motor vehicle accidents. *Shavers,* supra*; Johnson v Michigan Mutual*, 180 Mich App 314, 322; 578 NW2d 282 (1998). See also *Miller v State Farm*, 410 Mich 538, 568; 302 NW2d 537 (1981) ("the act is designed to minimize administrative delays and factual disputes that would interfere with achievement of the goal of expeditious compensation of damages suffered in motor vehicle accidents."). The current no-fault act provides complete coverage to those who are severely injured by not providing any time limits or dollar limits for the medical benefits portion of the insurance.

Secondly, a further purpose is to provide accident victims with a source and means of recovery. *State Farm Mutual Automobile Ins. Co. v Kurylowicz*, 67 Mich App 568, 574; 242 NW2d 530 (1976); *Slaughter v Smith*, 167 Mich. App. 400, 421 N.W.2d 702 (1988). Thirdly, the Supreme Court has also recognized cost containment as a purpose of the no-fault act as

seen in *Shavers*, supra. Finally, the purpose of the no-fault act is remedial social legislation requiring liberal interpretation. Consider *Turner v ACIA*, 448 Mich 22, 28; 528 NW2d 681 (1995) in which this Court stated "when courts interpret the no-fault act in particular, they are to remember that the act is remedial in nature and must be liberally construed in favor of the persons intended to benefit from it." See also *Putkamer v Transmerica*, 454 Mich 626, 631; 563 NW2d 683(1997).

In *Reed*, supra, the Court of Appeals addressed the issue of whether food expense is an allowable expense pursuant to MCLA 500.3105(1). In light of the purpose of the no-fault act as well as the requirement that it be liberally construed in favor of the insured, the Court of Appeals set forth the following test:

> "...where an injured person is unable to care for himself **and would be institutionalized were a family member not willing to provide home care**, a no fault insurer is liable to pay the cost of maintenance in the home."
>
> *Id.* at 453. (Emphasis Added)

This test is a highly workable solution to the issue of whether the expense of food is an "allowable expense." First of all, this test is in accordance with the Legislative purpose of the no-fault act particularly as to providing complete compensation to those who are severely injured. Second, this test is narrowly construed. If an injured person **would be institutionalized** "but for" the family's willingness to provide the extensive care that is needed then, and only then, is food expense considered a "reasonable expense."

Consider the situation where an injured insured following an automobile collision is confined to a hospital, an in-patient rehabilitation facility or other rehabilitation program. The treating physician, along with the injured insured's family, determines that home care would be beneficial to the injured insured's care and rehabilitation. That person moves home, requiring all the care that the institution provided which is provided by family

members, supplemented by outside resources. Under these circumstances, according to *Reed*, supra, the food expense for the injured insured is an allowable expense. In other words, the injured insured **has not recovered** to the point where he no longer requires institutional-type services and is being discharged home, his home care **is part of his rehabilitative care**.

Not only does the Court of Appeal's decision in *Reed*, supra provide a highly workable solution because it is narrowly construed, but also because it requires much more than someone merely having been confined in an institution at one time or another as a result of a motor vehicle collision. It necessarily would require reasonable proof in the form of medical records or an Affidavit from a physician indicating that the injured insured would be institutionalized were it not for the family's willingness to provide the institutional-type care at home. Thus the Court of Appeals in *Reed*, supra, set forth a specific, understandable rule which is applicable only to a limited factual scenario thereby promoting efficiency of the courts as well as fairness of the law.

CPAN is concerned that overruling *Reed*, supra would result in the adoption of an ambiguous test, such as the test proposed by Defendant-Appellant, in determining whether food expense is an allowable expense. As will be further discussed herein, CPAN is concerned that the adoption of such a test would open the door to overreaching denials of benefits resulting in inadequate medical care to catastrophically injured insureds and delays in recovery of benefits which is contrary to the Legislative purpose of the no-fault law.

2. Public Policy Favors Encouraging Home Care for the Catastrophically Injured Insureds

In the context of a catastrophically injured individual requiring institutionalized care, the physicians and family members must determine if it would be in the best interest of the patient to continue institutionalized care or to discharge the patient to the family's care. The decision is not undertaken lightly. In many cases, the physician must consult with

occupational therapists, physical therapists, social workers, etc. In addition, the physician must also consider whether or not the family has adequate strength, time resources, insight, intelligence and concern before considering a discharge to the home. In fact, a physician may decline to transfer a patient to the family's care if the physician does not believe such a transfer would be in the best interest of the patient. In making this decision, the physician must take into consideration, the family's ability to provide adequate food and shelter.

According to the Defendant, if the patient remains in the institution, his food and shelter expense is the responsibility of the no-fault carrier. However, if the patient is discharged to the care of his family not because the patient no longer requires institutionalized care, but because the family is able and willing to assume the patient's care in the home, the no-fault carrier asserts that there has been a material change in the "products, services and accommodations" severing the casual nexus between the patient's injuries and his need for sustenance.

The Defendant's arguments are grossly misplaced.

The family is not legally obligated to assume the responsibility for caring for the patient. While the physician has the primary responsibility for the care of his patient, the no-fault carrier issuing the policy of insurance pursuant to the No-Fault Act is responsible for paying for "products, services and accommodations" necessary for the patients "care, recovery or rehabilitation". The family's decision to provide home-based care does not create a legal duty nor abrogate the no-fault statute or policy of insurance issued pursuant to the statute. In fact, the family's decision to transfer the patient from the institution to the home benefits the no-fault carrier by decreasing the overall institutional expenses attended to long term catastrophic institutional care.

Furthermore, if the no-fault carrier is not responsible for providing food and shelter for the physician's patient that would otherwise require institutionalized care, the physician will not authorize transfer to the home care environment. Needless to say, eliminating a food allowance would have a disproportionate impact upon poor families. The patient's physicians are acutely aware of the family's circumstances. Poor families with little or no discretionary income will not be able to demonstrate to the patient's physicians the necessary family resources to allow the physician to authorize transfer of the catastrophically inured person to the family's care. While it is true that a wealthy family receiving a $10.00 food allowance may receive trivial windfall, a poor family denied a food allowance may be prohibited from assuming the vital role of providing a home-based environment for the catastrophically injured individual. The Court has recognized that disparity in wealth should be taken into consideration in interpreting the goals set out in the no-fault statute reasoning:

> "The tort liability system discriminated, in terms of recovery, against the uneducated and those persons on a low income scale. FN50."

FN50. The trial court found:

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* * *

> " . . . (t)he percentage of recovery by level of family income increased as the family income increased, and also increased as the level of education increased. For example, those with a family income under $5,000 recovered 38% of their economic loss. Those with family incomes of $5,000 to $9,999 recovered 52% of their economic loss, and those with income over $10,000 recovered 61% of their economic loss. By the same token, those who had only a grade school education recovered 24% of their economic loss. Those with a high school education recovered 53% of

> their economic loss, and those who had some college training recovered 70% of their economic loss."

Shavers, supra at 622.

In addition, proper nutrition is part of the patient's treatment program. Would you build a house and then not provide appropriate maintenance? After extended and costly treatment and rehabilitation, improper nutrition may result in a catastrophically injured patient losing the medical gains previously achieved and may possibly result in the patient returning to the institution for remedial medical care and rehabilitation. A poor result is preventable if the patient is provided with appropriate nutrition through a food allowance. Since catastrophically injured individuals may lack sufficient insight and judgment into maintaining a proper diet, providing a food allowance with appropriate instruction to the family could prevent needless additional hospitalization or residential facility housing with its accompanied extraordinary expense.

Importantly, physicians and hospitals are well aware of the escalating costs of medical care including extended hospitalizations in residential care facilities. In order to curb escalating expenses, the healthcare industry has cooperated with managed care organizations and insurance companies to reduce costs, avoid waste and increase the efficiency in delivering healthcare services. To that end, physicians have also encouraged families to assume certain responsibilities for their injured family members in order to conserve limited medical resources such as nursing care, janitorial services, food and housing. If the food and shelter expense is eliminated, the court will create a disincentive for families to remove patients from institutions to the home. If anything, the Court should expand, not restrict the incentives for families to assume home care by providing a clear statement that the No-Fault

Act provides for the catastrophically injured who may be discharged to the family's care a generous food and shelter allowance.

Finally, although the Defendant carefully distinguishes hospital-based institutional care, with the extraordinary expense of institution and food, from family-based home care with the ordinary expense of sustenance, the Defendant misplaces its emphasis upon the "causal nexus" of the food allowance. The purpose of the food allowance in the institution is identical to the food allowance in the home: maintain the health of the catastrophically injured motor vehicle accident victim. As Justice Boyle insightfully observed:

> "Where a person who normally would require institutional treatment is cared for at home in a quasi-institutional setting made possible by the love and dedication of the injured victim's family, the test for "allowable expenses" should not differ from that set out in MCL 500.3107(a); MSA 24.13107(a):
>
> Personal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation.
>
> The statute requires that three factors be met before an item is an "allowable expense": 1) the charge must be reasonable, 2) the expense must be reasonably necessary, and 3) the expense must be incurred. These are the standard requirements for recovery of such expenses under all no-fault plans, 12A Couch, Insurance (2d ed), § 45.674, and they are the proper requirements for application in this case. The focus should be on the product, service, or accommodation provided, not upon the provider's status as a relative. An item that would be provided in an institutional setting is not barred from being an "allowable expense" merely because it is provided at home instead."
>
> *Manley v DAIIE*, 425 Mich. 140, 169; 388 N.W.2d 216 (1986). (Emphasis added)

Accordingly, the focus should be on the "product, service or accommodation provided" and not upon "the provider's status." Whether the food and shelter allowance is provided at the hospital or at home does not change the character of the "product, service or accommodation". Food and shelter are as necessary to the physician's patient who remains institutionalized as it is to the physician's patient who can be safely returned to the home environment. The distinction is without a difference.

In conclusion, the physician's medical decision to return the patient to the home environment is not decided in a vacuum. By eliminating the no-fault allowance for food and shelter, the physician's decision will be more complicated and may result in the physician refusing to return the patient to the home environment contrary to the public policy favoring home based care.

B. Overruling *Reed* Would Catastrophically Impact Injured Insureds Currently Receiving Benefits for Food Expenses.

The care a catastrophically injured individual receives at home is unquestionably more personal and frequently of a higher quality than that received in an institutional-type setting. Care is provided on a one-on-one basis in a comfortable, familiar setting. Outside caregivers are handpicked by the family. However, caring for a catastrophically injured loved one comes at a tremendous sacrifice. Providing such care is physically exhausting, emotionally draining and, even with hiring outside help, can be full of unexpected consequences such as having to take time off from work to care for a sudden illness or emergency. Receiving reimbursement for the food expense of their injured insured makes providing such care more feasible. Families have made decisions and commitments to the catastrophically injured for future care based upon *Manley* and *Reed.*

If the decision in *Reed,* supra is overruled by this Court, family members currently providing care to their catastrophically injured loved one within the home may be faced with

a horrible reality-the return of their loved one to an institutional setting where the care is often inferior and uncaring. While this is not the option many family members wish to do, the overruling of *Reed* may simply make it too expensive for family members to care for their loved one. Even more troublesome is the situation where, as in the case with Mr. Griffith, a doctor has determined that being in a home setting would be more beneficial for an injured insured's rehabilitation. In this situation, the removal from the home due to increasing expense could have a devastating affect and cause that person's recovery to backslide. This result would thwart the Legislative intent of the no-fault act. Perhaps the elimination of food expense as an "allowable expense" may not alone make home care for catastrophically injured family members cost prohibitive however, we must follow the effect of such a ruling to its logical conclusion as will be discussed below.

C. Adopting Defendant-Appellant's Test of Determining Whether an Expense is an "Allowable Expense" Would Completely Contravene the Intent of the Legislature and Open the Door to Rampant Denials of Benefits.

Defendant-Appellant proposes that a new test be adopted in determining whether an expense is an "allowable expense" pursuant to MCLA 500.3105(1). More specifically, Defendant seeks a test that would disallow payment for any expense under the no-fault law "if the item is as necessary to uninjured persons as to the claimant." Although this case before the Court is limited to food expense only, the test set forth by Defendant-Appellant applies to any expense for which recovery is sought as an allowable expense. CPAN is concerned about the adoption of Defendant-Appellant's proposed rule on many levels.

First, it would thwart the Legislative purpose behind the enactment of the no-fault act which is to "afford prompt and adequate reparation for economic losses such as medical expenses incurred by individuals injured in motor vehicle accidents. *Shavers, supra.* Rather than providing prompt and adequate reparation of economic losses, the insurance

companies will be combing any and all bills submitted for payment in search of any expense which can be argued "as necessary to uninjured persons as to the claimant." In the home care setting, such items which may be denied payment include but are certainly not limited to, rent and vehicular transportation. Any item conforming to that definition will certainly be denied payment. Denials of payment will result in a flood of lawsuits seeking judicial determination of whether a particular expense is in fact, "as necessary to uninjured persons as to the claimant." Therefore, "prompt and adequate reparation for economic losses" will no longer be assured rather, injured insureds' will be forced to suffer tremendous delays in receiving benefits at great economic and emotional hardship.

Second, as explained earlier in this brief, as more items traditionally included as "allowable expenses" are not paid for, the prospect of caring for a catastrophically injured family member within the home becomes more daunting and family members will be discouraged from providing home care. Although home care may be deemed more beneficial for an injured insured's rehabilitation and recovery, many families will simply be unable to afford to care for their loved one within the home. Failure to receive quality, personalized care may result in a more lengthy recovery and/or rehabilitation.

It is unlikely that the devastation would end there. Once successful in eliminating liability for "allowable expenses" in the area of room and board, the next logical step is for insurance companies to apply the test as proposed by Defendant-Appellant to hospitals, rehabilitation facilities, traumatic brain injury programs and the like. It is quite conceivable, and even likely, that insurance companies would dissect each bill line by line to determine whether any product, service or accommodation provided was "as necessary to uninjured persons as to the claimant" and refuse to pay portions of the bill accordingly. Under this analysis, items such as linens, bed clothing, toiletries could be denied.

The result of this would make medical and rehabilitative care more expensive for those who are catastrophically injured and the denial of recovery for such expenses may leave the injured insured without the means to obtain the necessary medical and rehabilitative care. Furthermore, injured insureds would be left without any recourse for these expenses as such items are unrecoverable in a third party lawsuit. The adoption of the test as proposed by Defendant-Appellant would not only thwart the purpose of the no-fault act but would create many of the same deficiencies which existed with the fault negligence system: numerous lawsuits, delay in receiving benefits and undercompensated victims.

RELIEF REQUESTED

CPAN is concerned that overruling *Reed,* supra and adopting the test proposed by Defendant-Appellant will have devastating effects upon catastrophically injured insureds both now and in the future. The result will be rampant denial of benefits which will not only create tremendous delays and numerous lawsuits but will result in inadequate care to the most catastrophically injured insureds. CPAN respectfully requests that this Honorable Court uphold the Court of Appeal's ruling in this matter and uphold the decision in *Reed*, supra.

Respectfully submitted,

COCHRAN, FOLEY & ASSOCIATES, P.C.
BY: TERRY L. COCHRAN, P35890
BY: MARY K. FREEDMAN, P47047